

Dominant Aggressor: Reducing Decades of Dual Arrest in Connecticut

Connecticut has long been a leader in advancing policy and practice that protects victims of domestic violence and holds offenders accountable. However, for more than 30 years, Connecticut has struggled with one of the country's highest dual arrest rates. **In Connecticut, approximately 20% of the time, both the victim and their abuser are arrested at the scene of an intimate partner violence incident. This is more than twice the national average of 7%.** This practice is bad for victims, their families, and Connecticut's criminal justice system. We know that Connecticut can do better.

We are proposing that Connecticut adopt a dominant aggressor clause in the state's family violence arrest law (46b-38b) to help reduce our high dual arrest rate. Studies have shown that dominant aggressor laws achieve their stated objective and have contributed to the reduction of dual arrest rates in other states. At least 27 other states have explicit dominant aggressor laws, with 10 of those states mandating the arrest of the party identified as the dominant aggressor.

PROBLEM

Even with the self-defense exception added in 2004, Connecticut's mandatory arrest law has contributed to its dual arrest challenge:

- CT's intimate partner dual arrest rate is 20%.
- That's more than twice the national average of 7%.
- Dual arrest is a statewide challenge with 87 of 106 law enforcement entities in CT demonstrating an intimate partner dual arrest rate double or more than double the national average.
- Dual arrest has negative consequences for victims, their families, and the criminal justice system.

SOLUTION

Amend Connecticut's family violence arrest law to include a dominant aggressor provision:

- When police receive complaints from two or more opposing parties, they should determine which party is the dominant aggressor.
- Factors such as self-defense, relative degree of injury, and threats creating fear of physical injury can guide police in making this determination.
- Make a policy statement that it is not the intent of the law to prohibit dual arrest, but to discourage it when appropriate.

It's time for Connecticut to make this change. Various stakeholders have tried both legislatively and administratively to reduce dual arrest during the past three decades. Unfortunately, it appears the state has moved the needle as far as it can without adopting a dominant aggressor provision in the family violence arrest law.

It is important to understand that we are not endeavoring into this proposed change with the goal of eliminating all dual arrests. There are situations where dual arrest is the appropriate response. However, given that Connecticut's dual arrest rate is more than twice the national average, there is clearly opportunity to make change. It is our hope that after 30 years, various systems and policy leaders will formulate a new, shared approach to addressing dual arrest that brings Connecticut more in line with other states.

WHAT IS DUAL ARREST?

A dual arrest occurs when law enforcement arrests both parties at the scene of a family violence or intimate partner violence incident (intimate partner refers to spouses, former spouses, individuals who are dating, or individuals who have a child in common). Connecticut has a mandatory arrest law for all incidents of family violence (C.G.S. 46b-38b). This means that law enforcement must make an arrest upon finding probable cause that a family violence crime has been committed unless a party has been found to have acted in self-defense.

Enacted in 1987, Connecticut's mandatory arrest law was intended to provide the appropriate response to domestic violence. However, it has seemingly resulted in the unintended consequence of dual arrests occurring approximately 20% of the time in intimate partner violence incidents. That is more than twice the national average of 7%.¹ There is no one system to blame for this situation. Various stakeholders, including law enforcement, are simply doing their jobs and adhering to the existing structure of Connecticut's family violence arrest law.

Connecticut's challenge with dual arrest is statewide, cutting across diverse socio-economic communities, through rural, suburban, and urban settings.

Eight-seven (87) of the state's 106 law enforcement entities have intimate partner dual arrest rates that are double or more than double the national average.² Intimate partner violence incidents are difficult, complex situations. Law enforcement responds to highly volatile and emotional scenes that, on the service, may appear more gray than black and white. Structural limitations inherent in Connecticut's existing family violence arrest law and liability concerns on the part of law enforcement contribute to the state's high dual arrest rate.

DUAL ARREST IN CT

CCADV recently compiled dual arrest data from two primary sources – CT Department of Emergency Services and Public Protection (DESPP) Annual Family Violence Arrest Report and CT Judicial Branch Court Support Services Division (CSSD) Intakes. DESPP arrest data for 2014 – 2016 shows an 18% dual arrest rate for intimate partner violence incidents.³ CSSD court intake data for that same time period demonstrates a 27.6% dual arrest rate for intimate partner violence incidents.⁴ While the difference between these two data sources and how various systems capture data is an issue requiring further attention, both sources demonstrate dual arrest rates well above the national average of 7%.

CT'S FAMILY VIOLENCE MANDATORY ARREST LAW

CGS § 46b-38b Investigation of family violence crime by peace officer. Arrest.

(a) Whenever a peace officer determines upon speedy information that a family violence crime has been committed within such officer's jurisdiction, such officer shall arrest the person or persons suspected of its commission and charge such person or persons with the appropriate crime. The decision to arrest and charge shall not (1) be dependent on the specific consent of the victim, (2) consider the relationship of the parties, or (3) be based solely on a request by the victim...

(b) No peace officer investigating an incident of family violence shall threaten, suggest or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party. Where complaints are made by two or more opposing parties, the officer shall evaluate each complaint separately to determine whether such officer should make an arrest or seek a warrant for an arrest. Notwithstanding the provisions of subsection (a) of this section, when a peace officer reasonably believes that a party in an incident of family violence has used force as a means of self defense, such officer is not required to arrest such party under this section.

(c) No peace officer shall be held liable in any civil action regarding personal injury or injury to property brought by any party to a family violence incident for an arrest based on probable cause or for any conditions of release imposed pursuant to subsection (b) of section 54-63c.

According to the CT Judicial Branch, **family violence arrests account for approximately one-third of the criminal court docket.** Of the intimate partner dual arrest cases before the court in 2015, the majority of individuals arrested were screened by CSSD Family Relations as being at a low to moderate risk of reoffending (72% of women and 64% of men). Cases are typically dismissed or nolledd for the individuals screened as low or moderate risk (93% of low risk women and 86% of moderate risk women; 88% of low risk men and 78% of moderate risk men). Few low or moderate risk arrestees are convicted (15% of women and 26% of men).

Given that family violence arrests account for one-third of Connecticut's criminal court docket, this data demonstrating the low to moderate risk posed by the majority of intimate partner dual arrests offers the opportunity to consider how policy changes might achieve efficiencies in the criminal justice system.

IMPACT OF DUAL ARREST

Dual arrests have both short- and long-term consequences for victims, families, and the criminal justice system. One of the most often cited consequences of dual arrest is the impact it has on the victim's perception of the criminal justice system. Many victims suffer abuse for a number of years before they have the courage to reach out for help. If they are arrested once they reach out for help, chances are that they won't reach out for help again. This distrust of the criminal justice system means that the victim is much less safe moving forward – a fact that her or his abuser may realize and exploit. Summarized by the National Council of Juvenile and Family Court Judges (NCJFCJ) in its 1994 family violence model state code, "in making dual arrests, officers may place victims at accelerated risk and often immunize perpetrators from accountability."⁶

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Children who witness a dual arrest also experience a significant amount of trauma that can result in a persistent distrust of the criminal justice system. Children often see, hear, and understand more than we think they do, and they have a solid understanding of their family dynamics. If witnessing intimate partner violence in their household, they often know which parent is the victim and which parent is the aggressor. If they see the parent they identify as the "true victim" arrested, they are not likely going to view law enforcement as someone they can trust to help.

Victims and their families also experience financial consequences of a dual arrest. The victim is forced to enter the criminal justice system as a defendant and therefore may need to hire an attorney. She or he may need to take time off of work or hire childcare to attend court dates. The issuance of a criminal protective order against the victim may leave her or him vulnerable to further legal issues due to violations. And even if the case is ultimately dismissed or nolledd, the victim may face an ongoing record of a family violence arrest. Furthermore, the dual arrest could result in immigration issues for the victim.

Finally, the criminal justice system also ends up using limited resources to deal with thousands of dual arrests, a large percentage of which may be unnecessary. **If Connecticut's dual arrest rate was brought more in line with other states, the CT Judicial Branch and state's attorneys would see fewer family violence intakes and presumably be able to repurpose the resources currently utilized for those cases.**

“ In making dual arrests, officers may place victims at accelerated risk and often immunize perpetrators from accountability.

- National Council of Juvenile and Family Court Judges
1994 Model Code on Domestic and Family Violence

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CT's HISTORY OF ATTEMPTED FIXES

Since Connecticut's adoption of a mandatory family violence arrest law, several studies have been conducted both nationally and within Connecticut to better understand the unintended consequence of dual arrest. All of these studies have noted Connecticut's high dual arrest rate relative to other states. Connecticut is not the first state to experience this challenge and researchers have pointed to the structure of family violence arrest laws as one of the most significant contributing factors to high dual arrest rates. In a 2016 study, David Hirschel and Lindsay Deveau highlight this unintended consequence, "police, faced with the pressure to arrest and uncertain what has actually transpired, arrest both parties, unjustly arresting victims in the process."⁷

In 2004, the Connecticut General Assembly adopted a self-defense exception in the state's family violence arrest law. This was a compromise to CCADV's proposal of adding a dominant aggressor clause to the statute. This compromise was supported at the time by a variety of stakeholders and was expected to assist law enforcement in assessing the use of self-defense and infliction of "defensive" as opposed to "offensive" injuries. **Unfortunately, despite the self-defense exception being law for 14 years and seeing increases in training for law enforcement over this time period, there has not been a meaningful decrease in the state's intimate partner violence dual arrest rate.**

DOMINANT AGGRESSOR LAW

CCADV has proposed that Connecticut make the shift to a dominant aggressor law for family violence incidents that involve complaints from two or more opposing parties. Such a law will guide police in determining which party is the **dominant aggressor, typically defined as the most significant aggressor or the person who poses the most serious ongoing threat.** Dominant aggressor laws are currently in place in 27 other states.⁸ While not seeking to prohibit dual arrests, we are hopeful that such a change in Connecticut will bring our state's dual arrest rate more in line with the national average.

Recognizing that victims often engage in the use of force or violence against their abusers in direct response to their victimization, states have "increasingly recognized that arresting victims who are acting in response to abuse

PROPOSED CHANGE TO CGS § 46b-38b

(a) Except as provided in subsection (b) of this section, whenever a peace officer determines upon speedy information that a family violence crime has been committed within such officer's jurisdiction, such officer shall arrest the person **[or persons]** suspected of its commission and charge such person **[or persons]** with the appropriate crime. The decision to arrest and charge shall not (1) be dependent on the specific consent of the victim, (2) consider the relationship of the parties, or (3) be based solely on a request by the victim...

(b) **[No peace officer investigating an incident of family violence shall threaten, suggest or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party.]** Where complaints are made by two or more opposing parties, the officer is not required to arrest both parties. The officer shall evaluate each complaint separately to determine **[whether such officer should make an arrest or seek a warrant for an arrest] which party is the dominant aggressor. In determining which party is the dominant aggressor, the officer shall consider the intent of this section to protect victims of domestic violence, whether one party acted in defense of self or a third party pursuant to section 53a-19, the relative degree of injury, threats creating fear of physical injury, and any history of family violence between the parties if that history can be reasonably obtained by the officer. The officer shall arrest the party whom the officer believes to be the dominant aggressor. It is the intent of this section to discourage, when appropriate, but not prohibit dual arrests. [Notwithstanding the provisions of subsection (a) of this section, when a peace officer reasonably believes that a party in an incident of family violence has used force as a means of self defense, such officer is not required to arrest such party under this section.]**

(c) No peace officer investigating an incident of family violence shall threaten, suggest or otherwise indicate the arrest of all parties for the purpose of discouraging requests for law enforcement intervention by any party.

perpetrated against them is not consistent with sound public policy.⁷⁹ This was evident in Connecticut with the adoption of the self-defense exception in 2004. In its model state code for addressing family violence, NCJFCJ recommended in 1994 that states adopt dominant aggressor provisions in arrest statutes.¹⁰ **Dual arrests have been found to be twice as likely in states without dominant aggressor laws**, offering strong evidence that such laws achieve their stated objective.¹¹

Police officers are tasked with making a number of determinations about the guilty party in a variety of crimes every day. Given the complex and often volatile nature of domestic violence incidents, dominant aggressor laws are intended to guide officers in their determination of the most significant or culpable party by considering the relative degree of injuries, threats and level of fear, history of domestic violence, and the use of self-defense.

The International Association of Chiefs of Police (IACP) calls on law enforcement to determine which party is the dominant aggressor in its "Intimate Partner Violence Response Policy & Training Content Guidelines." Per the guidelines:

- Arrest is the preferred response with the predominant aggressor only, and,
- Dual arrest is strongly discouraged. Officers should not use dual arrests as a substitute for a thorough investigation. Supervisors should be involved in decisions of dual arrest.¹²

A requirement to make a determination about dominant aggressor is not outside the scope of law enforcement as they routinely investigate complex cases. Furthermore, it helps prevent negative consequences for both the victim and the criminal justice system.

PREFERRED vs. MANDATORY ARREST

CCADV's proposal for the inclusion of a dominant aggressor provision in Connecticut's family violence arrest law also maintains the existing mandatory arrest provision of the law. Various stakeholders in Connecticut's criminal justice system have suggested that removing police discretion with the adoption of the mandatory arrest law is the cause of the high dual arrest rate because officers have no choice but to arrest any person for whom they have probable cause to believe committed a crime of family violence. There was however acknowledgement in 2004 that law enforcement should be considering the use of self-defense and that they need not arrest a party found to have used self-defense. As previously discussed, the change in the law to consider self-defense has not resulted in a meaningful decrease of the state's intimate partner violence dual arrest rate.

While we do not disagree that the existing structure of the law may cause confusion, we caution against removing the mandate to arrest altogether. **Arrest is an important and necessary intervention to address domestic violence and advocates across the state fear that elimination of the mandatory arrest law would swing the state to the other end of the arrest spectrum, with few arrests in domestic violence incidents.** It is imperative that law enforcement expend the requisite time and effort to determine the dominant aggressor and then arrest that individual. Of the states with dominant aggressor laws, 10 mandate the arrest of the dominant aggressor.¹³

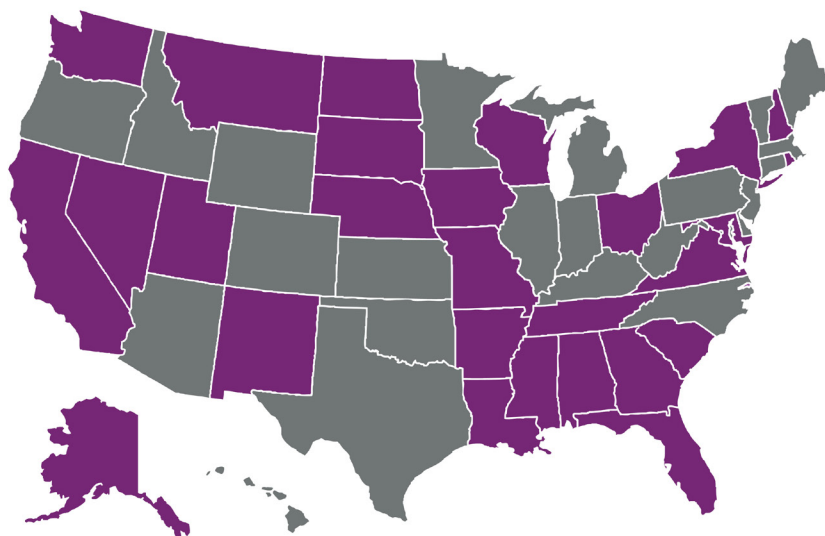
TIME FOR CHANGE!

27 STATES have explicit dominant aggressor laws.

DUAL ARRESTS have been found to be **TWICE AS LIKELY** in states **WITHOUT DOMINANT AGGRESSOR LAWS.**

INTERNATIONAL ASSOC. OF CHIEFS OF POLICE calls for **DETERMINATION OF DOMINANT AGGRESSOR**, discourages dual arrests.

WHAT ARE OTHER STATES DOING?



At least 27 states have explicit dominant aggressor laws.¹⁴ Of those states, 23 offer in statute some level of guidance or factors for law enforcement to consider when determining which party is the dominant aggressor.¹⁵ Ten (10) states mandate the arrest of the dominant aggressor for either all or felony acts of domestic violence.¹⁶

Rhode Island (§ 12-29-3)¹⁷

When the officer has probable cause to believe that family or household members have assaulted each other, the officer is not required to arrest both persons. The officer shall arrest the person whom the officer believes to be the primary physical aggressor.

New Hampshire (§ 173-B:10)¹⁸

When the peace officer has probable cause to believe that the persons are committing or have committed abuse against each other, the officer need not arrest both persons, but should arrest the person the officer believes to be the primary physical aggressor. In determining who is the primary physical aggressor, an officer shall consider the intent of this chapter to protect victims of domestic violence, the relative degree of injury or fear inflicted on the persons involved, and any history of domestic abuse between these persons if that history can reasonably be obtained by the officer.

Nevada (§ 171.137)¹⁹

1. Except as otherwise provided in subsection 2, whether or not a warrant has been issued, a peace officer shall, unless mitigating circumstances exist, arrest a person when the peace officer has probable cause to believe that the person to be arrested has, within the preceding 24 hours, committed battery upon his or her [family or household member].

2. If the peace officer has probable cause to believe that a battery described in subsection 1 was a mutual battery, the peace officer shall attempt to determine which person was the primary physical aggressor. If the peace officer determines that one of the persons who allegedly committed a battery was the primary physical aggressor involved in the incident, the peace officer is not required to arrest any other person believed to have committed battery during the incident. In determining whether a person is a primary physical aggressor for the purposes of this subsection, the peace officer shall consider:

- a. Prior domestic violence involving either person;
- b. The relative severity of the injuries inflicted upon the persons involved;
- c. The potential for future injury;
- d. Whether one of alleged batteries was committed in self-defense; and
- e. Any other factor that may help the peace officer decide which person was the primary physical aggressor.

ENDNOTES

1. U.S. Department of Justice, Federal Bureau of Investigation, National Incident Based Reporting System.
2. Connecticut Department of Emergency Services and Public Protection. "Family Violence Arrest Report." 2014-2016. Available at <http://www.dpsdata.ct.gov/dps/ucr/ucr.aspx>.
3. Ibid.
4. Cox, S. (2018). "A Review of Police and Court Processing of Intimate Partner Dual Arrests in Connecticut." Presented to Connecticut Coalition Against Domestic Violence.
5. Ibid.
6. National Council of Juvenile and Family Court Judges. (1994) "Model Code on Domestic and Family Violence." Available at <https://www.ncjfcj.org/resource-library/publications/model-code-domestic-and-family-violence>.
7. Hirschel, D. & Deveau, L. (2016). "The Impact of Primary Aggressor Laws on Single Versus Dual Arrest in Incidents of Intimate Partner Violence." *Violence Against Women*. 23(10): 1155-1176.
8. Aequitas. (2017). "Predominant Aggressor Arrest Provisions: Statutory Compilation." Available at www.aequitasresource.org.
9. Ibid.
10. Supra note 6 at p. 7
11. Supra note 7 at p. 1171
12. International Association of Chiefs of Police. (2017) "Intimate Partner Violence Response Policy and Training Content Guidelines. Available at <http://www.theiacp.org/portals/0/documents/pdfs/IACPIntimatePartnerViolenceResponsePolicyandTrainingGuidelines2017.pdf>
13. Supra note 8
14. Alabama, Alaska, Arkansas, California, Florida, Georgia, Iowa, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Dakota, Ohio, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, Wisconsin
15. Alabama, Alaska, Arkansas, California, Georgia, Iowa, Louisiana, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New York, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, Wisconsin
16. Arkansas, Iowa, Louisiana, Missouri, Ohio, Rhode Island, South Dakota, Virginia, Washington, Wisconsin
17. Rhode Island General Laws § 12-29-3 retrieved January 2018 from <http://webserver.rilin.state.ri.us/Statutes/TITLE12/12-29/12-29-3.HTM>
18. New Hampshire Revised Statutes § 173-B:10 retrieved January 2018 from <http://www.gencourt.state.nh.us/rsa/html/XII/173-B/173-B-10.htm>
19. Nevada Revised Statutes § 171.137 retrieved January 2018 from <https://www.leg.state.nv.us/NRS/NRS-171.html#NRS171Sec137>

WHO IS CCADV?

Connecticut Coalition Against Domestic Violence, Inc. (CCADV) is the state's leading voice for domestic violence victims and those organizations that serve them. Our coalition is comprised of Connecticut's 18 domestic violence service organizations that provide critical support to keep victims safe 24 hours per day, wherever they live in our state. Confidential services provided by our members include a 24-hour toll-free crisis line, emergency shelter, safety planning, counseling, support groups, court advocacy, information and referrals, and community education. These services are provided free of cost to all victims of domestic violence.

**The Umbrella Center for
Domestic Violence Services**
Ansonia | 203.736.9944

The Center for Family Justice
Bridgeport | 203.384.9559

Women's Center of Greater Danbury
Danbury | 203.731.5206

**Domestic Violence Program
United Services, Inc.**
Dayville | 860.774.8648

The Network
Enfield | 860.763.4542

**Domestic Abuse Services
Greenwich YWCA**
Greenwich | 203.622.0003

Interval House
Hartford | 860.527.0550

Chrysalis Domestic Violence Services
Meriden | 203.238.1501

New Horizons
Middletown | 860.347.3044

Prudence Crandall Center
New Britain | 860.225.6357

**The Umbrella Center for
Domestic Violence Services**
New Haven | 203.789.8104

Safe Futures
New London | 860.701.6000

Domestic Violence Crisis Center
Norwalk | 203.852.1980

Women's Support Services
Sharon | 860.364.1900

Domestic Violence Crisis Center
Stamford | 203.588.9096

Susan B. Anthony Project
Torrington | 860.482.7133

Safe Haven
Waterbury | 203.575.0036

**Domestic Violence Program
United Services, Inc.**
Willimantic | 860.456.9476

To learn more, visit www.ctcadv.org.

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